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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

Chapter 11

SEARS HOLDINGS CORPORATION, et. al.,

Case No. 18-23538 (RDD)

Debtors.¹

(Jointly Administered)

**SAS INSTITUTE INC.'S LIMITED OBJECTION AND RESERVATION OF
RIGHTS REGARDING ASSUMED CONTRACTS, PURSUANT TO SALE
ORDER AND ASSUMPTION AND ASSIGNMENT ORDER**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holding Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRE Holding Corporation (4816).

TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

SAS Institute Inc. (“SAS”) hereby submits this limited objection and reservation of rights in accordance with (1) Paragraph 39 of the Court’s *Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts, and Leases in Connection Therewith and (IV) Granting Related Relief*, entered herein on February 8, 2019 [Dkt. No. 2507] (the “**Sale Order**”), and (2) Paragraph 26 of the Court’s *Order (I) Authorizing Assumption and Assignment of Certain Executory Contracts and Leases and (II) Granting Related Relief*, entered herein on April 2, 2019 [Dkt. No. 3008] (the “**Assumption and Assignment Order**”), and respectfully states as follows:²

BACKGROUND

1. In connection with the Court’s approval of the Asset Purchase Agreement with Buyer, the Debtors proposed the assumption and assignment of certain executory contracts to which SAS is a party, pursuant to two Assumption and Assignment Notices: the Initial Notice dated January 18, 2019 [Dkt. No. 1731] and the Second Supplemental Notice dated January 31, 2019 [Dkt. No. 2314]. These two notices listed four contracts

² Capitalized terms used but not defined herein shall have the respective meanings set forth in the Sale Order and the Notice of Assumption and Assignment of Additional Contracts, filed by Buyer herein on April 26, 2019 [Dkt. No. 3397] (the “**Additional Contracts Notice**”).

related to SAS: items nos. 6085-6086 in the Initial Notice, and items nos. 317-318 in the Second Supplemental Notice, as follows:

Initial Notice

| No. | Debtor Counterparty | Contract Title | Contract Executed Date | Contract Expiration Date | Contract Number |
|------|---------------------------------------|--|------------------------|--------------------------|-----------------|
| 6085 | Sears Holdings Management Corporation | Inventory Mgmt - SAS Institute - IPlan Subscription - Aug 2018 | 9/1/2018 | 8/31/2019 | CW2339494 |
| 6086 | Sears Holdings Management Corporation | [blank - no description] | 11/6/1998 | 8/30/2019 | CW2339599 |

Second Supplemental Notice

| No. | Debtor Counterparty | Contract Title | Contract Executed Date | Contract Expiration Date | Contract Number |
|-----|---------------------------------------|--|------------------------|--------------------------|-----------------|
| 317 | Sears Holdings Management Corporation | Amendment to Software License Agreement | [not provided] | N/A | CW2339599 |
| 318 | Sears Holdings Management Corporation | MT-SAS Institute-Mainframe 4 Month License-Sept - Dec 2018 | [not provided] | N/A | CW2340037 |

2. On April 17, 2019 [Dkt. No. 3268], the Debtors filed a Notice of Rejection of Executory Contracts, which rejected two of the above SAS contracts: item no. 6085 above (#CW2339494) and item no. 318 above (#CW2340037) (collectively, the “**Rejected SAS Contracts**”). SAS has not objected to the rejection of these two contracts.

3. On April 26, 2019 [Dkt. No. 3397], Buyer filed the Additional Contracts Notice, designating the following SAS contract for assumption and assignment:

| No. | Debtor Counterparty | Contract Title | Contract No. | Contract Executed Date | Contract Expiration Date |
|-----|---------------------------------------|---|--------------|------------------------|--------------------------|
| 161 | Sears Holdings Management Corporation | Amendment to Software License Agreement | CW2339599 | N/A | 8/30/2019 |

LIMITED OBJECTION AND RESERVATION OF RIGHTS

4. SAS has confirmed with Buyer that the above contract designated for assumption and assignment (#CW2339599) is the amendment executed by SAS and Sears Holdings Management Corporation on November 26-27, 2018 (“Amendment No. 39”), and Buyer has provided SAS with a copy for confirmation. Amendment No. 39 amends the Software License Agreement dated November 6, 1998 (referenced in the amendment as Master License Agreement Number 36687) (the “Master License Agreement”), by, *inter alia*, extending the license period for certain software at a site referenced as “SAS Internal Site No. 630990” for an additional annual license period of August 31, 2018 through August 30, 2019.

5. SAS has no objection to the assumption and assignment of Amendment No. 39 to Buyer, subject to confirming that the Master License Agreement is also being assumed and assigned to Buyer. Amendment No. 39 expressly incorporates all undefined capitalized terms from the Master License Agreement. In addition, Paragraph 4 of Amendment No. 39 provides as follows:

Incorporation/Integration. Except as herein modified, all terms and conditions of the [Master License] Agreement and its amendments remain in full force and effect. In the event of a conflict between the terms and conditions of this Amendment and the terms and conditions of the [Master License] Agreement, as amended to date, the terms and conditions of this Amendment shall control with respect to the license of the Software.

6. The Master License Agreement and Amendment No. 39 are thus together a single, integrated contract. This is apparently understood by the Debtors as well, as both the Initial Notice and the Second Supplemental Notice used the same contract number to

refer to this software license (#CW2339599), and the Initial Notice referred to its execution date as November 6, 1998 and its expiration date as August 30, 2019.

7. SAS seeks only a confirmation from Buyer that its designation of Amendment No. 39, pursuant to the Additional Contracts Notice, includes the Master License Agreement (except for the Rejected SAS Contracts).

8. SAS files this limited objection and reservation of rights pending the resolution of this issue. SAS reserves the right to argue that the assumption and assignment of Amendment No. 39 must include the assumption of the Master License Agreement, as they are part of a single, integrated contract.

9. Pursuant to Paragraph 35 of the Sale Order and Paragraph 27 of the Assumption and Assignment Order, SAS will continue to seek to resolve the above issue consensually with Buyer and the Debtors, but reserves the right to seek such resolution through the Court.

[continued on the following page]

CONCLUSION

WHEREFORE, for the foregoing reasons, SAS respectfully requests that the Court
(i) condition assumption and assignment of Amendment No. 39 on confirmation that it
includes assumption and assignment of the Master License Agreement, and (ii) grant such
other relief as may be appropriate.

Dated: May 6, 2019

Respectfully submitted,

/s/ Robert T. Honeywell

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